



**Michigan Supreme Court
State Court Administrative Office
Trial Court Services Division**
Michigan Hall of Justice
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TO: District Court Clerks/Administrators, Circuit Court Administrators, County Clerks,
State Bar of Michigan, Michigan Creditors Bar Association, Michigan Lawyers
Weekly

FROM: Amy Byrd, Forms and Records Manager
Traci Gentilozzi, Forms and Manuals Analyst

RE: Civil Judgment Forms (MC 07a and 10) and Garnishment Forms (MC 12, 13, and 52)

DATE: August 30, 2007

There has been some confusion about the use of the new civil judgment forms and garnishment forms. The following instructions explain how to calculate interest on forms MC 12, MC 13, and MC 52. In addition, this memo provides background information on the changes that have been made to these forms and the reasons for those changes. In conjunction with this memo, revisions to the instruction pages of these three forms will be posted to our website at <http://courts.michigan.gov/scao/courtforms/garnishment/garindex.htm> and distributed to courts and printers. The 5/07 versions of MC 12, MC 13, and MC 52 may be used until depleted, provided interest is calculated according to the instructions in this memo.

Instructions for Using Forms MC07a, MC 10, MC 12, MC 13, and MC 52

The confusion in using the new forms centers on how to calculate interest and the definition of "judgment interest" and "total judgment." The 5/07 version of MC 07a and MC 10 includes a line for "judgment interest," which does not include interest that accrued before the complaint was filed. Prefiling interest is included in the amount of damages requested in the complaint; it is not part of the judgment interest, which under MCL 600.6013 is calculated on the total judgment (damages and costs) from the filing date of the complaint. Attached are copies of MC 07a and MC 10, identifying these fields.

If a civil judgment does not include judgment interest in the “total judgment” field, the judgment creditor may use either the 8a/07 or 5/07 version of MC 12, MC 13, and MC 52 when preparing a request for garnishment on that judgment. Because no interest is listed, there is no confusion in this situation about whether interest that accrued after filing is included in the judgment amount on the garnishment.

However, if a civil judgment includes judgment interest in the “total judgment” field (as in the forms in use before the 5/07 revisions), the interest amount reported in line 2 should not include any postfiling interest already included in the judgment.

SCAO advises that attorneys and courts using the 5/07 version of MC 07a and MC 10 carefully check to be sure no judgment interest is included in the total judgment amount.

Comments Welcome

SCAO recognizes other issues may arise regarding the use of these new forms and will address such issues when brought to its attention. Written comments regarding the revisions to MC 07a, MC 10, MC 12, MC 13, and MC 52 may be sent to CourtFormsInfo@courts.mi.gov through December 31, 2007. These comments will be posted to the website in January 2008 for a 30-day comment period and will then be addressed by the Michigan Court Forms Committee at its meeting in March 2008.

If you have any questions about this information, please feel free to contact Amy Byrd at 517-373-4864 or Traci Gentilozzi at 517-373-2217.

Enclosures

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT	DEFAULT REQUEST, AFFIDAVIT, ENTRY AND JUDGMENT (SUM CERTAIN)	CASE NO.
Court address		Court telephone no.

Plaintiff name(s), address(es), and telephone no(s).

Defendant name(s), address(es), and telephone no(s).

v

Plaintiff attorney, bar no., address, and telephone no.

Defendant attorney, bar no., address, and telephone no.

USE NOTE: Plaintiff must complete the Request and Affidavit and the Default Judgment before filing with the court.

- REQUEST AND AFFIDAVIT** 1. I request a default entry against _____ for failure to appear.
2. The claim against the defaulted party is for a sum certain or for a sum which by computation can be made certain, and the plaintiff requests judgment in the amount of \$ _____ from the defaulted party.
3. The defaulted party is not an infant or incompetent person.
4. ☐ It is unknown whether the defaulted party is in the military service. ☐ The defaulted party is not in the military service.
☐ The defaulted party is in the military but there has been notice of pendency of the action and adequate time and opportunity to appear and defend (attached, as appropriate, is a waiver of rights and protections provided under the Servicemembers Civil Relief Act).
 Facts upon which this conclusion is based are: (specify) _____
5. The claim ☐ is ☐ is not based on a note or other written evidence of indebtedness (if so, evidence is attached for filing and cancellation by the clerk).

Applicant/Attorney signature

Bar no.

Subscribed and sworn to before me on _____, _____ County, Michigan.
DateMy commission expires: _____ Signature: _____
Date Deputy court clerk/Notary public

- 1 - this field should include any prefiling interest requested in the complaint
- 2 - this field is the "total judgment" and shall not include judgment interest
- 3 - these fields are for showing the judgment interest accrued from the filing date of the complaint

Judgment interest is interest accrued on the judgment; it does not include prefiling interest, which is included in damages, and is therefore included in the total judgment

DEFAULT JUDGMENT **IT IS ORDERED** this judgment is granted in favor of the plaintiff(s) as follows:

*Attach bill of costs if statutory limit is exceeded.

Damages: \$ 1 Costs: \$ _____ Attorney fee/Other: \$ _____ Total judgment: \$ 2

(This judgment will earn interest at statutory rates, computed from the filing date of the complaint.)

Judgment interest accrued thus far is \$ 3 and is based on: (if needed, attach separate sheet)

- ☐ the statutory rate of _____ % from _____ to _____ .
- ☐ the statutory 6-month rate(s) of _____ % from _____ to _____ .

Date

Court clerk/Judge

This judgment has been entered and will be final unless, within 21 days of default judgment date, a motion to set aside default is filed.

CERTIFICATE OF MAILING I certify that on this date copies of this default entry and default judgment were served on the parties or their attorneys by first-class mail to their last-known addresses.

Date

Signature

STATE OF MICHIGAN
JUDICIAL DISTRICT
JUDICIAL CIRCUITJUDGMENT
Civil

CASE NO.

Court address

Court telephone no.

Plaintiff(s)

Defendant(s)

v

Plaintiff/Plaintiff attorney name and address

☐ JUDGMENT

For: _____

Against: _____

Defendant/Defendant attorney name and address

☐ Trial☐ Consent

- 1 - this field should include any prefilng interest requested in the complaint
 2 - this field is the "total judgment" and shall not include judgment interest
 3 - these fields are for showing the judgment interest accrued from the filing date of the complaint

Judgment interest is interest accrued on the judgment; it does not include prefilng interest, which is included in damages, and is therefore included in the total judgment

ORDER OF JUDGMENT

Damages: \$ 1

Costs: filing \$ _____ jury \$ _____ motion \$ _____ service \$ _____ \$ _____

Attorney fee: ☐ statutory ☐ other (specify) _____ \$ _____

Total judgment amount (this judgment will earn interest at statutory rates, computed from the filing date of the complaint): \$ 2

The judgment interest accrued thus far is \$ 3 and is based on: (if additional rates apply, attach a separate sheet)

☐ the statutory rate of _____ % from _____ to _____ .

☐ the statutory 6-month rate(s) of _____ % from _____ to _____ and _____ % from _____ to _____ .

Other conditions, if any:

☐ A note or other written evidence of indebtedness has been filed with the clerk for cancellation.☐ Approved as to form, notice of entry waived.**IT IS ORDERED** that this judgment is granted.This judgment resolves the last pending claim and closes the case unless checked here. ☐

Judgment date

Judge/Court clerk

Bar no.

Plaintiff/Attorney

Defendant/Attorney

Judgment has been entered and will be final unless within 21 days of judgment date a motion for new trial or an appeal is filed.

CERTIFICATE OF MAILING

I certify that on this date copies of this judgment were served on the appropriate parties or their attorneys by first-class mail to their last-known addresses.

Date

Signature

Background on 2006 and 2007 Changes to MC 07a, MC 10, MC 12, MC 13, and MC 52

In 2006, SCAO was asked to revise the civil judgment forms (MC 07a and MC 10) and garnishment forms (MC 12, 13 and 52) to reduce inconsistencies in calculating interest on civil judgments. There appeared to be significant inconsistencies regarding how and when to calculate and show pre-filing and postjudgment interest, both at the time judgment was entered and when garnishing the defendant. The Michigan Court Forms Committee reviewed these requests and recommended revisions to the judgment and garnishment forms in 2006 that were intended to provide more information about the rates used for calculating judgment interest and the dates for which those rates were applied. Those recommendations were approved by the State Court Administrator and distributed for use in June 2006.

Shortly afterwards, additional suggestions were made to further revise the civil judgment forms with regard to interest. These suggestions were published for a 30-day comment period in January 2007, in keeping with a new court form process that includes publication for comment of proposed revisions and new forms before the Michigan Court Forms Committee meets. These proposed revisions generated no comment during the publication period, and the Committee recommended that the revisions be approved.

During 2006 and 2007, SCAO also received several letters from an attorney who argued that it was illegal to include interest in the judgment amount. The attorney cited MCL 600.6013 as authority for this position, along with several appellate cases. After discussing the issue with Supreme Court Legal Counsel, SCAO responded to these letters, offering a number of solutions.

After some internal discussion, a decision was made to attempt to resolve the issue. Discussions ensued involving the attorney, members of the Michigan Creditors Bar Association, and the trial court that initiated the recent revisions of the forms.

Following these discussions, further revisions of the civil judgment forms were referred to the Michigan Court Forms Committee for comment through e-mail. The primary change was to remove judgment interest from the total judgment amount, based on one interpretation of MCL 600.6013, while continuing to provide fields on the forms for the plaintiff to indicate the amount of judgment interest that has accrued from the date the complaint was filed to the date the judgment is prepared (or some other similar date). The instructions on the garnishment forms were changed accordingly. These revisions were approved by the Committee and the State Court Administrator, and the revised forms were distributed in May 2007.

In July 2007, a collections attorney notified SCAO of a potential problem using the 5/07 garnishment forms with pre-5/07 civil judgment forms. When using these two forms, the interest calculation can result in double interest. The 5/07 garnishment forms instruct users to calculate interest from the date the complaint is filed, but older civil judgments may already include judgment interest in the total judgment amount. This problem does not occur when the 5/07 garnishment forms are used in conjunction with the 5/07 civil judgment forms.

A meeting was held on July 31, 2007, to discuss a resolution, including possible changes to the forms. Attendees of the meeting included SCAO staff, members of the Michigan Creditors Bar

Background on 2006 and 2007 Changes to MC 07a, MC 10, MC 12, MC 13, and MC 52

Association, various court personnel, and private attorneys. After much discussion, the group reached a consensus that the forms remain as is at this point to avoid further confusion or problems, and that specific instructions be added to inform courts and parties how to use the pre-5/07 judgments with current garnishment forms. There was no consensus by this group about the interpretation of MCL 600.6013 with regard to inclusion of judgment interest in the actual judgment amount, and it was not the focus of this group to resolve that issue.

To alleviate the calculation problem when using the 5/07 garnishment forms with pre-5/07 civil judgment forms, attendees proposed there be two separate directives added to the garnishment forms instruction sheet: one directive should inform parties to calculate judgment interest from the filing date of the complaint when judgment interest is not included in the total judgment amount, and the other directive should inform parties to calculate judgment interest from the date entered on the judgment when judgment interest is included in the total judgment amount.

After considerable subsequent discussion about how to word the instructions most concisely and accurately, the SCAO adopted two statements to be added to MC 12 and MC 13, and a single statement to be added to MC 52. The use of the updated forms is explained more fully in the attached memorandum, which should be referred to when using MC 12, MC 13, and MC 52.